COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 61 of 2002

New India Assurance Company Ltd.
Haldwani. …… **Appellant.**

Versus

Sri Rupomal and another. ….. **Respondents.**

Mr. T.A.Khan, learned counsel for the appellant.
Ms. Z.A.Siddiqui, learned counsel for the claimant-respondent.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the Insurance Company under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 28-2-2002, passed in M.A.C.T. No. 148 of 2000, Rupomal Vs. New India Assurance Company Ltd. and another, by the Motor Accident Claims Tribunal/Additional District Judge, II F.T.C. Nainital, ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 2,00,000/- along with interest @ 9% per annum in favour of the claimant as against the Opposite Party No.1-appellant. Aggrieved, the Insurance Company has come up in appeal before this Court with a prayer to set aside the impugned judgment and award mainly on the ground that finding of the Tribunal on permanent disability of the injured-claimant is errorneous and has challenged the quantum of compensation.

Necessary facts are that the injured-claimant aged 45 years was earning Rs. 10,000/- per month from his business. ON 14.5.2002 at about 7.30 p.m. he was going on foot on Bareilly Road towards Mandi. In front of police out-post one Truck No. UTF-8561 came from the back side and hit the injured with the result the claimant sustained injuries and was rushed to Civil Hospital Haldwani. He was referred to Bareilly for better treatment. He

incurred heavy expenses worth Rs. 50,000/- on his treatment and has incurred loss in his business. The offending vehicle was being driven rashly and negligently and was duly insured with the appellant. O.P. No.1-appellant filed its written statement and contested the claim petition. It has denied the insurance of vehicle for want of knowledge. The injured claimant has to prove the expenses by documentary evidence as well as his income. Legal pleas were also taken. O.P.No.2 admitted the accident and asserted that the vehicle was duly insured, therefore, the liability rests on the insurance company appellant. The learned Tribunal framed necessary issues in the case. After considering the evidence, the Tribunal has found that the accident resulting into injuries to the claimant was caused due to rash and negligent driving by the driver of the offending truck. It has also been found that that due to injuries sustained by the injured-claimant, his both hands were crushed and he was referred to Bareilly and he had undergone operation. He was hospitalized from 4.5.2000 to 14.6.2000. F.I.R. of the accident was also lodged. The Tribunal after considering the documentary evidence coupled with the statement of P.W.1 claimant Rupomal and P.W.2 Dr. Kaushal Kumar, came to the conclusion that for the injuries sustained by him, expenditure worth Rs. 75000/- towards treatment, etc. is proved and it has been found that the injured was bound to incur additional expenses for lodging, conveyance, etc. for which the Tribunal has determined amount of Rs. 1,00,000/- towards medical expenses, etc.. The Tribunal further held that keeping in view partial disability, the injured is entitled to get Rs. 50,000/- towards general damages. The Tribunal has further awarded sum of Rs. 25000/- towards loss of business and for pain and suffering each, thereby, total compensation worth Rs. 2,00,000/- has been awarded along with interest as mentioned earlier.

We have heard learned counsel for the parties and have carefully examined the entire material on record including the

impugned judgment and award as well as the pleas raised in the written statement by the appellant-Insurance Company.

At the outset, it may be mentioned that in paragraph 9 of the written statement, the Insurance Company has raised an objection that the present case is the result of collusion between the injured and the insured, therefore, the Insurance Company is at liberty to take all the defences available to the insured under Section 170 of the Act. This ground has no bearing on the face of it. Admittedly, no permission was granted to the appellant by the Tribunal under Section 170(b) of the Act, therefore, the grounds of challenge cannot be enlarged. The matter about challenge of quantum of award given by the learned Tribunal has been elaborated dealt with by the Apex Court in the case of ***"National Insurance Co. Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002)7, S.C.C., 456].*** In the aforesaid case, it has been held by the Hon'ble Apex Court that ***"even if no appeal is preferred under Section 173 if 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** We have carefully perused the aforesaid case law and the pronouncement of the Apex Court in the case referred to above. The facts of the case under appeal are squarely covered by the law laid down by the Apex Court in the case of ***Nicolletta Rohtagi and others (supra).*** Therefore, we are of the consistent view that the appellant-Insurance Company is not entitled to challenge the quantum of award of the Tribunal.

It has been contended on behalf of the appellant that the learned Tribunal has erred in holding the permanent disability of the injured claimant, therefore, the appeal deserves to be allowed. As against it, the learned counsel for the injured-claimant (respondent no. 1) it has been submitted that the evidence on record and the oral evidence of Dr. Kaushal Kumar produced as

P.W.2 coupled with the testimony of injured P.W.1 is sufficient to hold that the claimant had been hospitalized in connection with his injuries for a period of about 1,1/2 months and the injured was operated upon for as many as five times. No evidence to the contrary has been led from the side of the appellant before the Tribunal, therefore, the findings are fully based on evidence on record. We have considered the entire material and we are inclined to accept the submissions of the injured-respondent that the evidence, as narrated in the earlier part of the judgment, is sufficient to hold that the learned Tribunal has arrived at correct findings regarding disability of the injured-respondent and there is no illegality or infirmity in the findings arrived at by the Tribunal, therefore, even on merits also, there is no force in the contentions raised by the Insurance Company-appellant, so as to warrant any interference with the judgment and award under appeal. Accordingly, in any view of the matter, we are of the consistent view that there is nothing on record to lead us to take a different view on the findings arrived at by the learned Tribunal. In the circumstances of the case, the Tribunal has awarded just and proper compensation of Rs. 2,00,000/- along with interest @ 9% per annum. The appeal, therefore, is devoid of merit and must fail.

Accordingly, the appeal is dismissed and the judgment and award under appeal is upheld. No order as to costs.

The amount in deposit with this Court shall be transmitted to the Motor Accident Claims Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

24-08-2004
RCP